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MINISTRY OF LAW

(Legislative Department)

New Delhi, the 20th May, 1959/Vaisakha 30, 1881 (Saka)

The following Act of Parliament received the assent of the President on the 19th May, 1959, and is hereby published for general information:—

THE COST AND WORKS ACCOUNTANTS ACT, 1959

No. 23 OF 1959

[19th *May*, 1959]

An Act to make provision for the regulation of the profession of cost and works accountants.

BE it enacted by Parliament in the Tenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Cost and Works Accountants Act, 1959.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions and interpretation.

2. (*1*) In this Act, unless the context otherwise requires,—

(*a*) "associate" means an associate member of the Institute;

(*b*) "cost accountant" means a person who is a member of the Institute;

(*c*) "Council" means the Council of the Institute;

(*d*) "dissolved company" means the Institute of Cost and Works Accountants registered under the Companies Act, 1956; 1 of 1956

(*e*) "fellow" means a fellow of the Institute;

(*f*) "Institute" means the Institute of Cost and Works Accountants of India constituted under this Act;

(*g*) "prescribed" means prescribed by regulations made under this Act;

(*h*) "President" means the President of the Council;

(*i*) "Register" means the Register of members maintained under this Act;

(*j*) "Vice-President" means the Vice-President of the Council;

(*k*) "year" means the period commencing on the 1st day of April of any year and ending on the 31st day of March of the succeeding year.

(*2*) Save as otherwise provided in this Act, a member of the Institute shall be deemed "to be in practice" when, individually or in partnership with one or more members of the Institute in practice, he, in consideration of remuneration received or to be received,—

(*i*) engages himself in the practice of cost and works accountancy; or

(*ii*) offers to perform or performs services involving the costing or pricing of goods or services or the preparation, verification or certification of cost accounting and related statements or holds himself out to the public as a cost accountant in practice; or

(*iii*) renders professional services or assistance in or about matters of principle or detail relating to cost accounting procedure or the recording, presentation or certification of costing facts or data; or

(*iv*) renders such other services as, in the opinion of the Council, are or may be rendered by a cost accountant in practice;

and the words "to be in practice", with their grammatical variations and cognate expressions, shall be construed accordingly.

Explanation.—A member of the Institute who is a whole-time salaried employee of any person shall not be deemed to be in practice within the meaning of this sub-section.

CHAPTER II

THE INSTITUTE OF COST AND WORKS ACCOUNTANTS

Incorporation of the Institute.

3. (*1*) All persons whose names are entered in the Register at the commencement of this Act and all persons who may hereafter have

their names entered in the Register under the provisions of this Act, so long as they continue to have their names borne on the said Register, are hereby constituted a body corporate by the name of the Institute of Cost and Works Accountants of India, and all such persons shall be known as members of the Institute.

(2) The Institute shall have perpetual succession and a common seal, and shall have power to acquire, hold and dispose of property, both movable and immovable, and shall by its name sue or be sued.

Entry of names in the Register.

4. (1) Any of the following persons shall be entitled to have his name entered in the Register, namely:—

(*i*) any person who was an associate or a fellow of the dissolved company (other than an honorary associate or honorary fellow thereof) immediately before the commencement of this Act, except any such person who is not a permanent resident of India and is not at such commencement practising as a cost accountant in India;

(*ii*) any person who has passed such examination and completed such training as may be prescribed for members of the Institute;

(*iii*) any person who, at the commencement of this Act, is engaged in the practice of cost accountancy in India and who fulfils such conditions as the Central Government or the Council may specify in this behalf;

(*iv*) any person who has passed such other examination and completed such other training without India as is recognised by the Central Government or the Council as being equivalent to the examination and training prescribed for members of the Institute:

Provided that in the case of any person who is not permanently residing in India, the Central Government or the Council may impose such further conditions as it may deem fit;

(*v*) any person domiciled in India, who at the commencement of this Act is studying for any foreign examination and is at the same time undergoing training, whether within or without India, or, who, having passed such examination, is at such commencement undergoing training whether within or without India:

Provided that such foreign examination and training are recognised by the Central Government or the Council in this behalf:

Provided further that the person passes the examination and completes his training within five years from the commencement of this Act.

(2) Every person belonging to the class mentioned in clause (i) of sub-section (1) shall have his name entered in the Register without the payment of any entrance fee.

(3) Every person belonging to any of the classes mentioned in clauses (ii), (iii), (iv) and (v) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of the prescribed entrance fee, which shall not exceed rupees three hundred in any case.

(4) The Central Government shall take such steps as may be necessary for the purpose of having the names of all persons belonging to the class mentioned in clause (i) of sub-section (1) entered in the Register at the commencement of this Act.

Fellows and Associates.

5. (1) The members of the Institute shall be divided into two classes designated respectively as associates and fellows.

(2) Any person other than a person to whom the provisions of sub-section (3) apply shall, on his name being entered in the Register, be deemed to have become an associate member of the Institute and so long as his name remains so entered, shall be entitled to use the letters AICWA after his name to indicate that he is an associate member of the Institute of Cost and Works Accountants.

(3) Any person who was a fellow of the dissolved company and who is entitled to have his name entered in the Register under clause (i) of sub-section (1) of section 4, shall be entered in the Register as a fellow of the Institute.

(4) A member, being an associate who has been in continuous practice in India for at least five years, whether before or after the commencement of this Act, or whether partly before and partly after the commencement of this Act, and a member who has been an associate for a continuous period of not less than five years and who possesses such qualifications as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a cost accountant shall, on payment of the prescribed entrance fee, which shall not exceed rupees two hundred in any case, and on application made and granted in the prescribed manner, be entered in the Register as a fellow of the Institute.

Explanation I.—For the purposes of this sub-section, a person shall be deemed to have practised in India for any period for which he has held a certificate of practice under section 6, notwithstanding that he did not actually practise during that period.

Explanation II.—In computing the continuous period during which a person has been an associate of the Institute, there shall be included any continuous period during which the person has been an associate of the dissolved company immediately before he became an associate of the Institute.

(*5*) Any person whose name is entered in the Register as a fellow of the Institute and so long as his name remains so entered, shall be entitled to use the letters FICWA after his name to indicate that he is a fellow of the Institute of Cost and Works Accountants.

Certificate of practice.

6. (*1*) No member of the Institute shall be entitled to practise, whether in India or elsewhere, unless he has obtained from the Council a certificate of practice.

(*2*) Every such member shall make application in such form and pay such annual fee, for his certificate as may be prescribed, and such fee shall be payable on or before the 1st day of April in each year:

Provided that if a member of the Institute who was in practice immediately before the commencement of this Act has made within one month of such commencement an application for the grant of certificate of practice, he shall not be deemed to have contravened the provisions of sub-section (*1*) by reason of his having practised during the period between such commencement and the disposal of the application.

Members to be known as cost accountants.

7. Every member of the Institute in practice shall, and any other member may, use the designation of a cost accountant and no member using such designation shall use any other description, whether in addition thereto or in substitution therefor:

Provided that nothing in this section shall be deemed to prohibit any such member from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other Institute of accountancy, whether in India or elsewhere, as may be recognised in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as cost accountants.

Disabilities.

8. Notwithstanding anything contained in section 4, a person shall not be entitled to have his name entered in, or borne on, the Register if he—

(*i*) has not attained the age of twenty-one years at the time of his application for the entry of his name in the Register; or

(*ii*) is of unsound mind and stands so adjudged by a competent court; or

(*iii*) is an undischarged insolvent; or

(*iv*) being a discharged insolvent, has not obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or

(*v*) has been convicted by a competent court whether within or without India, of an offence involving moral turpitude and punishable with imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central Government has, by an order in writing removed the disability; or

(*vi*) has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct:

Provided that a person who has been removed from membership for a specified period, shall not be entitled to have his name entered in the Register until the expiry of such period.

CHAPTER III

COUNCIL OF THE INSTITUTE

Constitution of the Council of the Institute

9. (*1*) There shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it by or under this Act.

(2) The Council shall be composed of—

(*a*) not more than twelve persons elected by members of the Institute from amongst the fellows of the Institute chosen in such manner and from such regional constituencies as may be specified in this behalf by the Central Government by notification in the Official Gazette; and

(*b*) not more than four persons nominated by the Central Government.

Mode of election to Council.

10. (*1*) Elections under clause (*a*) of sub-section (2) of section 9 shall be conducted in the prescribed manner:

Provided that the first election under the said clause shall be held in such manner as the Central Government may specify in this behalf.

(2) Where any dispute arises regarding any such election, the matter shall be referred by the Council to a Tribunal appointed by

the Central Government in this behalf and the decision of such Tribunal shall be final:

Provided that no such reference shall be made except on an application made to the Council by an aggrieved party within thirty days from the date of the declaration of the result of the election.

(3) The expenses of the Tribunal shall be borne by the Council.

Nomination in default of election.

11. If the members of the Institute fail to elect any member under clause (*a*) of sub-section (2) of section 9 from any of the regional constituencies that may be specified under that clause, the Central Government may nominate any duly qualified person from such constituency to fill the vacancy, and any person so nominated shall be deemed to be a duly elected member of the Council.

President and Vice-President.

12. (1) The Council at its first meeting shall elect two of its members to be respectively the President and the Vice-President thereof, and so often as the office of the President or the Vice-President becomes vacant, the Council shall choose a person to be the President or the Vice-President, as the case may be:

Provided that on the first constitution of the Council a member of the Council nominated in this behalf by the Central Government shall discharge the functions of the President, until such time as a President is elected under the provisions of this sub-section.

(2) The President shall be the Chief Executive Authority of the Council.

(3) The President or the Vice-President shall hold office for a period of one year from the date on which he is chosen but so as not to extend beyond his term of office as a member of the Council, and, subject to his being a member of the Council at the relevant time, he shall be eligible for re-election:

Provided that the President of the Council at the time of the expiration of its duration shall continue to hold office until a new Council is constituted in accordance with the provisions of this Act.

Resignation of membership and casual vacancies.

13. (1) Any member of the Council may at any time resign his membership by writing under his hand addressed to the President, and the seat of such member shall become vacant when such resignation is notified in the Official Gazette.

(2) A member of the Council shall be deemed to have vacated his seat if he is declared by the Council to have been absent without sufficient excuse from three consecutive meetings of the Council, or if his name is, for any cause, removed from the Register under the provisions of section 20.

(3) A casual vacancy in the Council shall be filled by fresh election from the constituency concerned or by nomination by the Central Government, as the case may be, and the person elected or nominated to fill the vacancy shall hold office until the dissolution of the Council:

Provided that no election shall be held to fill a casual vacancy occurring within six months prior to the date of the expiration of the duration of the Council, but such a vacancy may be filled by nomination by the Central Government after consultation with the President of the Council.

(4) No act done by the Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Council.

Duration and dissolution of Council.

14. (1) The duration of any Council constituted under this Act shall be three years from the date of its first meeting.

(2) Notwithstanding the expiration of the duration of a Council (hereinafter referred to as the former Council), the former Council shall continue to exercise its functions under this Act until a new Council is constituted in accordance with the provisions of this Act, and on such constitution, the former Council shall stand dissolved.

Functions of the Council.

15. (1) The duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing power, the duties of the Council shall include—

(a) the examination of candidates for enrolment and the prescribing of fees therefor;

(b) the registration and training of students;

(c) the prescribing of qualifications for entry in the Register;

(d) the recognition of foreign qualifications and training for purposes of enrolment;

(e) the granting or refusal of certificates of practice under this Act;

(f) the maintenance and publication of a Register of persons qualified to practise as cost accountants;

(*g*) the levy and collection of fees from members, examinees and other persons;

(*h*) the removal of names from the Register and restoration to the Register of names which have been removed;

(*i*) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

(*j*) the carrying out, by financial assistance to persons other than members of the Council or in any other manner, of research in accountancy;

(*k*) the maintenance of libraries and publication of books and periodicals relating to cost accountancy and allied subjects; and

(*l*) the exercise of disciplinary powers conferred by this Act.

Staff, remuneration and allowances.

16. (*1*) For the efficient performance of its duties, the Council may—

(*a*) appoint a Secretary who may also, if so decided by the Council, act as Treasurer;

(*b*) appoint such other persons on its staff as it deems necessary;

(*c*) require and take from the Secretary or from any other employee of the Council such security for the due performance of his duties as the Council considers necessary;

(*d*) fix the salaries, fees, allowances and other conditions of service of the Secretary and other employees of the Council;

(*e*) with the previous sanction of the Central Government fix the allowances of the President, Vice-President and other members of the Council and its Committees.

(*2*) The Secretary of the Council shall be entitled to participate in the meetings of the Council and the Committees thereof but shall not be entitled to vote thereat.

Committees of the Council.

17. (*1*) The Council shall constitute from amongst its members the following Standing Committees, namely:—

(*i*) an Executive Committee;

(*ii*) a Disciplinary Committee; and

(*iii*) an Examination Committee.

(2) The Council may also form a Training and Educational Facilities Committee and such other Committees from amongst its members as it deems necessary for the purpose of carrying out the provisions of this Act.

(3) The Executive Committee shall consist of the President, and the Vice-President, *ex officio,* and three other members of the Council elected by the Council.

(4) The Disciplinary Committee shall consist of the President, *ex officio,* one member to be nominated by the Central Government from amongst the members nominated to the Council by that Government and one member to be elected by the Council.

(5) The Examination Committee shall consist of the President or the Vice-President, *ex officio,* as the Council may decide, and two other members of the Council elected by the Council.

(6) Notwithstanding anything contained in this section, any Committee formed under sub-section (2), may, with the sanction of the Council, co-opt such other members of the Institute not exceeding two-thirds of the total membership of the Committee as the Committee thinks fit, and any member so co-opted shall be entitled to exercise all the rights of a member of the Committee.

(7) The President shall be the Chairman of every Committee of which he is a member, and in his absence, the Vice-President, if he is a member of the Committee, shall be the Chairman.

(8) The Standing Committees and other Committees formed under this section shall exercise such functions and be subject to such conditions in the exercise thereof as may be prescribed.

Finances of the Council.

18. (1) There shall be established a fund under the management and control of the Council into which shall be paid all moneys received by the Council and out of which shall be met all expenses and liabilities properly incurred by the Council.

(2) The Council may invest any money for the time being standing to the credit of the fund in any Government security or in any other security approved by the Central Government.

(3) The Council shall keep proper accounts of the funds distinguishing capital from revenue.

(4) The annual accounts of the Council shall be subject to audit by a chartered accountant in practice within the meaning of the Chartered Accountants Act, 1949, to be appointed annually by the Council: 38 of 1949.

Provided that no member of the Council who is a chartered accountant or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section.

(5) As soon as may be practicable at the end of each year, but not later than the 30th day of September of the year next following,

the Council shall cause to be published in the Gazette of India a copy of the audited accounts and the Report of the Council for that year and copies of the said accounts and Report shall be forwarded to the Central Government and to all the members of the Institute.

(6) The Council may borrow from a scheduled bank as defined in the Reserve Bank of India Act, 1934, or from the Central Government— 2 of 1934.

(a) any money required for meeting its liabilities on capital account on the security of the fund or on the security of any other assets for the time being belonging to it; or

(b) for the purpose of meeting current liabilities pending the receipt of income by way of temporary loan or over-draft.

CHAPTER IV

REGISTER OF MEMBERS

Register. 19. (1) The Council shall maintain in the prescribed manner a Register of the members of the Institute.

(2) The Register shall include the following particulars about every member of the Institute, namely:—

(a) his full name, date of birth, domicile, residential and professional addresses;

(b) the date on which his name is entered in the Register;

(c) his qualifications;

(d) whether he holds a certificate of practice; and

(e) any other particulars which may be prescribed.

(3) The Council shall cause to be published in such manner as may be prescribed a list of members of the Institute as on the 1st day of April of each year, and shall, if requested to do so by any such member, send him a copy of such list.

(4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee differing in amount according as he is an associate or a fellow as may be prescribed.

Removal from the Register. 20. (1) The Council may remove from the Register the name of any member of the Institute,—

(a) who is dead; or

(*b*) from whom a request has been received to that effect; or

(*c*) who has not paid any prescribed fee required to be paid by him; or

(*d*) who is found to have been subject at the time when his name was entered in the Register, or who at any time thereafter has become subject, to any of the disabilities mentioned in section 8, or who for any other reason has ceased to be entitled to have his name borne on the Register.

(*2*) The Council shall remove from the Register the name of any member in respect of whom an order has been passed under this Act removing him from membership of the Institute.

CHAPTER V

MISCONDUCT

Procedure in inquiries relating to misconduct of members of Institute.

21. (*1*) Where on receipt of information by, or a complaint made to, it, the Council is *prima facie* of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee constituted under section 17, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed and shall report the result of its inquiry to the Council.

(*2*) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed, or the complaint shall be dismissed, as the case may be.

(*3*) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record a finding accordingly, and shall proceed in the manner laid down in the succeeding sub-sections.

(*4*) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely:—

(*a*) reprimand the member;

(*b*) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit:

Provided that where the Council is of opinion that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (*a*) or clause (*b*), but shall forward the case to the High Court with its recommendations thereon.

(5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is a misconduct other than any such misconduct as is referred to in sub-section (4), it shall forward the case to the High Court with its recommendations thereon.

(6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard and may thereafter make any of the following orders, namely:—

(a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;

(b) reprimand the member;

(c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;

(d) refer the case to the Council for further inquiry and report.

(7) Where it appears to the Court that the transfer of any case pending before it to another High Court, will promote the ends of justice or tend to the general convenience of the parties, it may so transfer the case, subject to such conditions, if any, as it thinks fit to impose, and the High Court to which such case is transferred shall deal with it as if the case had been forwarded to it by the Council.

Explanation I.—In this section "High Court" means the highest civil court of appeal, not including the Supreme Court, exercising jurisdiction in the area in which the person whose conduct is being inquired into carries on business, or has his principal place of business at the commencement of the inquiry:

Provided that where the cases relating to two or more members of the Institute have to be forwarded by the Council to different High Courts, the Central Government shall, having regard to the ends of justice and the general convenience of the parties, determine which of the High Courts to the exclusion of others shall hear the cases against all the members.

Explanation II.—For the purposes of this section "member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

(8) For the purposes of any inquiry under this section the Council and the Disciplinary Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters:— 5 of 1908

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavits.

Misconduct defined.

22. For the purposes of this Act, the expression "professional misconduct" shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

CHAPTER VI

REGIONAL COUNCILS

Constitution and functions of Regional Councils.

23. (1) For the purpose of advising and assisting it on matters concerning its functions, the Council may constitute such Regional Councils as and when it deems fit for one or more of the regional constituencies that may be specified by the Central Government under clause (a) of sub-section (2) of section 9.

(2) The Regional Councils shall be constituted in such manner and exercise such functions as may be prescribed.

CHAPTER VII

PENALTIES

Penalty for falsely claiming to be a member, etc.

24. Any person who,—

(i) not being a member of the Institute—

(a) represents that he is a member of the Institute; or

(b) uses the designation cost accountant; or

(*ii*) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practises as a cost accountant;

shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Penalty for using name of the Council, awarding degrees of cost accountancy, etc.

25. (*1*) Save as otherwise provided in this Act, no person shall,—

(*i*) use a name or a common seal which is identical with the name or the common seal of the Institute or so nearly resembles it as to deceive or as is likely to deceive the public;

(*ii*) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence in cost accountancy similar to that of a member of the Institute; or

(*iii*) seek to regulate in any manner whatsoever the profession of cost and works accountants.

(*2*) Any person contravening the provisions of sub-section (*1*) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(*3*) Nothing contained in this section shall apply to any University established by law or to any body affiliated to the Institute.

(*4*) If the Central Government is satisfied that any diploma or certificate or any designation granted or conferred by any person other than the Institute, which purports to be a qualification in cost accountancy but which, in the opinion of the Central Government, falls short of the standard of qualifications prescribed for cost accountants and does not in fact indicate or purport to indicate the position or attainment of any qualification or competence in cost accountancy similar to that of a member of the Institute, it may, by notification in the Official Gazette and subject to such conditions as it may think fit to impose, declare that this section shall not apply to such diploma or certificate or designation.

Companies not to engage in cost accountancy.

26. (*1*) No company, whether incorporated in India or elsewhere, shall practise as cost accountants.

(*2*) Any contravention of the provisions of sub-section (*1*) shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction to five thousand rupees.

Unqualified persons not to sign

27. (*1*) No person other than a member of the Institute shall sign any document on behalf of a cost accountant in practice or a firm of such cost accountants in his or its professional capacity.

(2) Any person contravening the provision of sub-section (*1*) shall, without prejudice to any other proceedings which may be taken against him, be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Offences by companies.

28. (*1*) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company", with respect to an offence under section 24, section 25 or section 27, means any body corporate and includes a firm or other association of individuals; and with respect to an offence under section 26 means a body corporate; and

(*b*) "director", in relation to a firm, means a partner in the firm.

Sanction to prosecute.

29. No person shall be prosecuted under this Act except on a complaint made by or under the order of the Council or of the Central Government.

CHAPTER VIII

DISSOLUTION OF THE INSTITUTE OF COST AND WORKS ACCOUNTANTS REGISTERED UNDER THE COMPANIES ACT, 1956 (1 OF 1956)

30. On the commencement of this Act,— Dissolution of the Institute of Cost and Works Accountants registered under the Companies Act, 1956.

(*a*) the company known as the Institute of Cost and Works Accountants registered under the Companies Act, 1956, shall be dissolved and thereafter no person shall make, assert or take any claims, demands or proceedings against the dissolved company or against any officer thereof in his capacity as such officer except in so far as may be necessary, for enforcing the provisions of this Act; 1 of 1956.

(*b*) the right of every member to or in respect of the dissolved company shall be extinguished, and thereafter no member of that company shall make, assert or take any claims or demands or proceedings in respect of that company except as provided in this Act.

31. (*1*) On the commencement of this Act, there shall be transferred to and vested in the Institute all the assets and liabilities of the dissolved company. Transfer of assets and liabilities of the dissolved company to the Institute.

(*2*) The assets of the dissolved company shall be deemed to include all rights and powers, and all property, whether movable or immovable of the company, including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in or arising out of such property as may be in the possession of the dissolved company and all books of accounts or documents of the dissolved company; and the liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind then existing of that company.

(*3*) All contracts, debts, bonds, agreements and other instruments of whatever nature to which the dissolved company is a party, subsisting or having effect immediately before the commencement of this Act, shall be of as full force and effect against or in favour of the Institute, as the case may be, and may be enforced as fully and effectively as if instead of the dissolved company, the Institute had been a party thereto.

(*4*) If, on the commencement of this Act, any suit, appeal or other legal proceeding of whatever nature by or against the dissolved company is pending, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer to the Institute of the assets and liabilities of the dissolved company or of

anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Institute, in the same manner and to the same extent as it would or may be continued, prosecuted and enforced by or against the dissolved company if this Act had not been passed.

Provisions respecting employees of the dissolved company.

32. (*1*) Every person employed in the dissolved company prior to the 1st day of September, 1958, and still in its employment immediately before the commencement of this Act shall, as from such commencement, become an employee of the Institute, shall hold his office or service therein by the same tenure and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity as he would have held the same under the dissolved company if this Act had not been passed, and shall continue to do so unless and until his employment in the Institute is terminated or until his remuneration, terms and conditions of employment are duly altered by the Institute.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any employee of the dissolved company to the Institute shall not entitle any such employee to any compensation under that Act or other law, and no such claim shall be entertained by any court, tribunal or other authority. 14 of 1947.

CHAPTER IX

MISCELLANEOUS

Appeals.

33. (*1*) Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties referred to in clause (*a*) or clause (*b*) of sub-section (*4*) of section 21, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to the High Court:

Provided that the High Court may entertain any such appeal after the expiry of the said period of thirty days, if it is satisfied that the member was prevented by sufficient cause from filing the appeal in time.

(*2*) The High Court may, on its own motion or otherwise, after calling for the records of any case, revise any order made by the Council under sub-section (*2*) or sub-section (*4*) of section 21 and may—

(*a*) confirm, modify or set aside the order;

(*b*) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;

(*c*) remit the case to the Council for such further enquiry as the High Court considers proper in the circumstances of the case;

(*d*) pass such other order as the High Court thinks fit:

Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has been given an opportunity of being heard.

Explanation.—In this section "High Court" and "member of the Institute" have the same meanings as in section 21.

Alteration in the Register and cancellation of certificate.

34. (*1*) Where an order is made under this Act reprimanding a member a record of the punishment shall be entered against his name in the Register.

(*2*) Where the name of any member is removed, the certificate of practice granted to him under this Act shall be recalled and cancelled.

Directions to the Central Government.

35. (*1*) The Central Government may from time to time issue such directions to the Council as in the opinion of the Central Government are conducive to the fulfilment of the objects of this Act and in the discharge of its functions, the Council shall be bound to carry out any such directions.

(*2*) Directions issued under sub-section (*1*) may include directions to the Council to make any regulations or to amend or revoke any regulations already made.

(*3*) If, in the opinion of the Central Government the Council has persistently made default in giving effect to the directions issued under this section, the Central Government may, after giving an opportunity to the Council to state its case, by order, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be specified by the Central Government.

(*4*) Where the Central Government passes an order under sub-section (*3*) dissolving the Council, it may, pending the constitution of a new Council in accordance with the provisions of this Act, authorise any person or body of persons to take over the management of the affairs of the Institute and to exercise such functions as may be specified in this behalf by the Central Government.

Protection of action taken in good faith.

36. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any regulations or orders made thereunder.

Maintenance of branch offices.

37. (*1*) Where a cost accountant in practice or a firm of such cost accountants has more than one office in India, each one of such offices shall be in the separate charge of a member of the Institute:

Provided that the Council may in suitable cases exempt any cost accountant in practice or firm of such cost accountants from the operation of this sub-section.

(2) Every cost accountant in practice or firm of such cost accountants maintaining more than one office shall send to the Council a list of offices and the persons in charge thereof and shall keep the Council informed of any changes in relation thereto.

Reciprocity.

38. (1) Where any country, specified by the Central Government in this behalf by notification in the Official Gazette, prevents persons of Indian domicile from becoming members of any institution similar to the Institute established under this Act or from practising the profession of cost accountancy or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to become a member of the Institute or practise the profession of cost accountancy, in India.

(2) Subject to the provisions of sub-section (1), the Council may prescribe the conditions, if any, subject to which foreign qualifications relating to cost accountancy shall be recognised for the purposes of entry in the Register.

Power to make regulations.

39. (1) The Council may, by notification in the Gazette of India, make regulations for the purpose of carrying out the objects of this Act, and a copy of such regulations shall be sent to each member of the Institute.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the standard and conduct of examinations under this Act;

(b) the qualifications for the entry of the name of any person in the Register as a member of the Institute;

(c) the qualification required for the purposes of sub-section (4) of section 5;

(d) the conditions under which any examination or training may be treated as equivalent to the examination or training prescribed for members of the Institute;

(e) the conditions under which any foreign qualification may be recognised;

(f) the manner in which and the conditions subject to which applications for entry in the Register may be made;

(*g*) the fees payable for membership of the Institute and the annual fees payable by associates and fellows of the Institute in respect of their certificates ;

(*h*) the manner in which elections to the Council and the Regional Councils may be held;

(*i*) the particulars to be entered in the Register;

(*j*) the functions of Regional Councils;

(*k*) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

(*l*) the carrying out of research in accountancy;

(*m*) the maintenance of libraries and publication of books and periodicals relating to cost accountancy and allied subjects;

(*n*) the management of the property of the Council and the maintenance and audit of its accounts;

(*o*) the summoning and holding of meetings of the Council and committees thereof, the times and places of such meetings, the procedure to be followed thereat and the number of members necessary to form a quorum;

(*p*) the manner in which the annual list of members of the Institute shall be published;

(*q*) the powers, duties and functions of the President and the Vice-President of the Council;

(*r*) the functions of the Standing and other committees and the conditions subject to which such functions shall be discharged;

(*s*) the terms of office, and the powers, duties and functions of the Secretary and other employees of the Council;

(*t*) the exercise of disciplinary powers conferred by this Act;

(*u*) the terms and conditions of service of persons who have become employees of the Institute under section 32 of this Act;

(*v*) the registration and training of students and the fees to be charged therefor; and

(*w*) any other matter which is required to be, or may be, prescribed under this Act.

(3) All regulations made by the Council under this Act shall be subject to the condition of previous publication and to the approval of the Central Government.

(4) Notwithstanding anything contained in sub-sections (1) and (2), the Central Government may frame the first regulations for the purposes mentioned in this section, and such regulations shall be deemed to have been made by the Council, and shall remain in force until they are amended, altered or revoked by the Council.

THE FIRST SCHEDULE

[*See* sections 21 (4) and 22]

PART I

Professional misconduct in relation to cost accountants in practice

A cost accountant in practice shall be deemed to be guilty of professional misconduct, if he—

(1) allows any person to practise in his name as a cost accountant unless such person is also a cost accountant in practice and is in partnership with or employed by himself;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional work, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner;

Explanation.—In this item, "partner" includes a person residing outside India with whom a cost accountant in practice has entered into partnership which is not in contravention of item (4) of this Part.

(3) accepts or agrees to accept any part of the profits of the professional work of a lawyer, auctioneer, broker or other agent who is not a member of the Institute;

(4) enters into partnership with any person other than a cost accountant in practice or a person resident without India who but for his residence abroad would be entitled to be registered as a member of the Institute under clause (*iv*) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships, provided that the cost accountant shares in the fees or profits of the professional work of the partnership both within and without India;

(5) secures, either through the services of a person not qualified to be his partner or by means which are not open to a cost accountant, any professional work;

(6) solicits clients or professional work either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means;

(7) advertises his professional attainments or services, or uses any designation or expression other than cost accountant on professional documents, visiting cards, letter-heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Cost and Works Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council;

(8) accepts a position as cost accountant previously held by another cost accountant in practice without first communicating with him in writing;

(9) charges or offers to charge, accepts or offers to accept in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings or results of such employment, except in cases which are permitted under any regulations made under this Act;

(10) engages in any business or occupation other than the profession of cost accountant unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a cost accountant from being a director of a company unless he or any of his partners is interested in such company as accountant;

(11) accepts a position as cost accountant previously held by some other cost accountant in practice in such conditions as to constitute under-cutting;

(12) allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any cost or pricing statements or any other statements related thereto.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person—

(*1*) pays or allows or agrees to pay directly or indirectly, to any person any share in the emoluments of the employment undertaken by the member;

(*2*) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a cost accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification;

(*3*) discloses confidential information acquired in the course of his employment otherwise than as required by any law for the time being in force or as permitted by his employer.

PART III

Professional misconduct in relation to members of the Institute generally

A member of the Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he—

(*1*) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false;

(*2*) not being a fellow styles himself as a fellow;

(*3*) does not supply the information called for or does not comply with the requirements asked for by the Council or any of its Committees.

THE SECOND SCHEDULE

[*See* sections 21 (5) and 22]

PART I

Professional misconduct in relation to cost accountants in practice requiring action by a High Court

A cost accountant in practice shall be deemed to be guilty of professional misconduct, if he—

(*1*) discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force;

(2) certifies or submits in his name or in the name of his firm a report of an examination of cost accounting and related statements, unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another cost accountant in practice;

(3) permits his name or the name of his firm to be used in connection with an estimate of cost or earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(4) expresses his opinion on cost or pricing statements of any business or any enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report;

(5) fails to disclose in a cost or pricing statement a material fact known to him, which is not disclosed in a cost or pricing statement, but disclosure of which is necessary to make such statement not misleading;

(6) fails to report a material mis-statement known to him to appear in a cost or pricing statement with which he is concerned in a professional capacity;

(7) is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information to warrant the expression of an opinion or makes exceptions which are sufficiently material to negate the expression of an opinion;

(9) fails to invite attention to any material departure from the generally accepted procedure of costing and pricing applicable to the circumstances;

(10) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended.

PART II

Professional misconduct in relation to members of the Institute generally requiring action by a High Court

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

(1) contravenes any of the provisions of this Act or the regulations made thereunder;

(2) is guilty of such other act or omission as may be specified by the Council in this behalf, by notification in the Gazette of India.

G. R. RAJAGOPAUL, *Secy.*

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